

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Date Purchased _____

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FIRST MERCURY INSURANCE COMPANY acting through
its agent RIVERSTONE CLAIMS MANAGEMENT, LLC,

SUMMONS

Plaintiff,

Plaintiffs,

D'AMATO & LYNCH, LLP, LUKE LYNCH, Jr. Esq.,
ARTURO BOUTIN, Esq., MICHAEL HAIG, DAVID
BOYAR, ROBERT LANG, John Does 1-20,
and Jane Does 1-10,

PLAINTIFF DESIGNATES
New York County as
The Place of trial.
The basis of venue
is CPLR § 509

Defendants..

-----X County of New York

~~NOTICE~~

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's Attorney within 20 days after the service of the summons, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: New York, New York
September 19, 2019



ANDREW LAVOOTT BLUESTONE
233 Broadway, Suite 2702
New York, New York 10279
(212) 791-5600
alb@bluestonelawfirm.com

NOTICE: The relief sought is money damages in Negligence, Breach of Fiduciary Duty, Conversion, Violation of the Rules of Professional Responsibility, Violation of Judiciary Law § 487, Fraudulent Conveyance and Unjust Enrichment. **Upon your failure to appear, judgment will be taken by default for a sum in excess of the jurisdiction of all lower courts, as determined by the Court along with interest, punitive and treble damages and the costs of this action.**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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FIRST MERCURY INSURANCE COMPANY acting through
its agent RIVERSTONE CLAIMS MANAGEMENT, LLC,
Plaintiff,

Index No. _____

VERIFIED COMPLAINT

-against-

D'AMATO & LYNCH, LLP, LUKE LYNCH, Jr. Esq.,
ARTURO BOUTIN, Esq., MICHAEL HAIG, DAVID
BOYAR and ROBERT LANG, John Does 1-20,
and Jane Does 1-10,

Defendants.

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PLAINTIFF, by its attorney ANDREW LAVOOTT BLUESTONE, alleges as follows:

1. FIRST MERCURY INSURANCE COMPANY., ("FMIC" 'or "CARRIER") is a corporation, organized under the laws of the State of Delaware with a principle place of business in Morristown, NJ.
2. RIVERSTONE CLAIMS MANAGEMENT, LLC ("Riverstone") is a limited liability company, organized under the laws of the State of Delaware with a principle place of business in Manchester, NH.
3. D'Amato & Lynch LLP ("D & L") is a law firm located in Manhattan.
4. D & L is formed as a limited liability partnership.
5. Luke Lynch, Jr. ("Lynch") is an individual, is an attorney, and is the sole general partner of D & L.
6. Arturo Boutin ("Boutin") is an individual, and is an attorney who is or was a partner or a limited partner of D & L.
7. David Boyar is an attorney who is or was a partner or a limited partner of D & L.
8. Robert Lang is an attorney who is or was a partner or a limited partner of D & L.

9. Michael Haig (“Haig”) was at the relevant times a non-attorney comptroller of D & L.
10. Riverstone acts as manager of claims and agent for FMIC.
11. Riverstone entered into an agreement dated August 14, 2017 (“Agreement”) with D & L which appointed D & L as National Coordinating Counsel (“NCC”) to represent FMIC’s policyholders as their attorney in litigations, mostly of a personal injury nature, where the policyholders were defendants in the personal injury litigations.
12. D & L over the course of time became responsible for obtaining and disbursing settlement monies to Plaintiffs in underlying personal injury actions where it represented underlying policyholder defendants in those personal injury actions.
13. In general, where a case between the underlying plaintiff and the policy holder defendant had been resolved, settlement monies would be provided to the settling underlying Plaintiff.
14. Such settlement monies were on occasion transmitted to D&L for deposit in the trust account of D & L to be held pending disbursement to the settling Plaintiff, as differentiated from fee payments to D & L and as differentiated from D & L’s operating account.
15. Management, control and accounting of the D & L trust accounts are all subject to the Rules of Professional Responsibility of the State of New York, Rule 1.15
16. Comingling of trust monies entrusted to D & L with D & L’s operating accounts is forbidden under Rule 1.15.
17. The Agreement did not discuss or set forth terms concerning the transmission or handling of trust fund payments for use in settlement payments to underlying Plaintiff in the personal injury actions. There is a routine industry practice pursuant to which an insurance company would transmit money, in trust, to the attorneys for the insured, then to be held in trust, and then to be paid over to the settling Plaintiff at settlement.

18. One underlying personal injury matter handled by D & L on behalf of Plaintiff was *Cox v. Linco Restoration Corp., et al.* (“Cox matter”).
19. Boutin, an attorney at D & L, handled the *Cox* matter along with others at D & L. He advised Plaintiff by email dated September 25, 2019 that the matter was settled and that the amount to be paid by FMIC was \$ 1 Million.
20. On October 15, 2018 FMIC issued check # 0000239219 in the amount of \$1 Million to the order of “D’Amato & Lynch LLP Trust Account.” (the “Check”)
21. D&L deposited the Check on October 17, 2018. The check was made payable to the D & L Trust Account. Nevertheless, D & L, then in financial difficulties, deposited the check into the D & L operating account.
22. Shortly thereafter, D & L advised that it was no longer able to handle the FMIC files and set in motion a process to end the Agreement and transfer the files to subsequent counsel.
23. Thereafter D & L advised Plaintiff that it had wrongfully deposited the trust monies into the D&L operating account.
24. A demand letter was issued on August 1, 2019 to D & L demanding that the \$ 1 Million trust settlement funds be returned.
25. Between the wrongful deposit of the \$1 million check to the D & L operating account and the demand letter D & L fraudulently conveyed the money, as the term is used in New York’s Debtor-Creditor Law sections 270 *et seq* from the firm’s operating account to other individuals or entities.
26. It appears that Michael Haig, the firms’ comptroller made the actual deposit.

27. On August 1, 2019, during an investigation, Daniel Lynch, brother of general and managing partner Luke Lynch, Jr. the general and managing partner of D & L, admitted that the check had been deposited into the D&L operating account.
28. Despite recognizing the error and despite the demand for return of the trust monies, D & L has refused, failed to and without cause not returned the \$1 Million trust money
29. A dispute about the handling of trust monies and retention of trust monies when those monies were received, handled and kept for or on account of any money which has not been laid out or for which D & L becomes answerable for is an “Extra-Contractual Obligation or Loss” as defined in section V.G (3) of the Agreement.
30. The loss of \$ 1Million is greater than any offset which may be solved by withholding future payments.
31. No offset is sufficient to cover the loss of \$ 1Million.
32. D & L has not paid the sum to Carrier within 30 days of the written demand of August 1, 2019.
33. D & L has failed to satisfy the demand for payment delivered by the Carrier, either directly or through RiverStone.
34. As a result, Carrier possesses, at its sole discretion all legal remedies to enforce payment of the \$1 Million pursuant to section V.G(3) of the agreement.
35. This dispute is not subject to mediation, arbitration or alternative dispute resolution pursuant to section VII.F of the agreement.
36. Plaintiff will be forced to pay a second \$ 1 Million to the settling underlying plaintiff in order to protect its policyholder.
37. Plaintiff has been damaged in the loss of this settlement trust fund payment.

38. Comingling of trust funds with operating funds of a law firm is a violation of the Rules of Professional Responsibility, which in this case proximately led to damage to Plaintiff.
39. Limited Partners of D & L are not shielded by any Limited Liability Partnership rules in this setting.
40. Lynch as the general partner is personally responsible for the control and handling of the trust account monies.
41. Each of the other partners are similarly responsible for the missing money.
43. Upon information and belief, Lynch was the sole signatory on the trust account.

FIRST CAUSE OF ACTION

DEFENDANTS NEGLIGENTLY HANDLED THE TRUST ACCOUNT MONIES

44. Defendant D & L was retained by Plaintiff in the FMIC retainer agreement.
45. The retainer agreement required that Defendants provide legal services to policy holders.
46. Section III(C) states that D & L “does not represent Carrier or Riverstone.”
47. Notwithstanding that contractual agreement, D & L became a fiduciary to Plaintiff and is subject to legal malpractice claims in the nature of “other special circumstances.”
48. D & L became a fiduciary to Plaintiff when it took possession of trust funds with the intent and agreement to hold and properly disburse those trust funds to the settling plaintiff.
49. D & L took possession of trust funds from Plaintiff which were due to underlying plaintiff who had sued the policyholders whom D & L represented.
50. A legal malpractice action is proper, even without privity of contract between Plaintiff and the attorney when there is “malice, collusion, fraud or other special circumstances.”

51. Here the other special circumstances are that D & L was hired by Plaintiff or the carrier to perform legal services for the benefit of the carrier or Plaintiff's policyholder/customers, and in doing so accepted trust account monies to be held in escrow for the benefit of the underlying plaintiff who had sued the policyholders.

52. D & L undertook to handle the monies entrusted to it (for the benefit of the underlying plaintiff) and in this undertaking implicitly and explicitly undertook to adhere to the Rules of Professional Conduct and the standard of practice of a competent attorney.

53. The Rules of Professional Conduct and the standard of practice of a competent attorney in New York require that trust accounts be held separate and apart from operating funds of a law firm.

54. The Rules of Professional Conduct and the standard of practice of a competent attorney in New York require that trust accounts be held separate and apart from operating funds of a law firm and that the managing attorney, or the supervising attorney or the general partner, or the signatory of the trust account supervise the individual attorneys and employees of the law firm in order to maintain the separation of funds as well as the integrity of the funds.

55. Lynch was the managing attorney, or the supervising attorney or the general partner, or the signatory of the trust account for D & L.

56. Lynch acted on behalf of D & L as escrow holder of the trust funds advanced by Plaintiff and which were payable only to the underlying plaintiff.

57. Lynch was required by the Rules of Professional Conduct as well as the standard of practice to act on behalf of D & L as escrow holder of the trust funds advanced by Plaintiff and which were payable only to the underlying plaintiff.

58. Boutin requested the funds from Plaintiff and was the attorney to whom the Check was sent.

59. Upon information and belief, Boutin handled the check, negotiated the Check and handled the funds along with Comptroller Haig

60. Neither the Check nor the proceeds of the Check were kept separate and apart from the operating funds as required by Rules of Professional Conduct 1.15.

61. The trust funds were commingled with the operating funds.

62. It was a departure from the standard of practice of a competent attorney to permit the comingling of trust funds and operating funds of an attorney or of a law firm.

63. The \$ 1 Million trust funds were comingled with operating fund of the law firm and were lost.

64. Despite a demand that the trust funds be produced, no funds have been produced.

65. This departure proximately damaged Plaintiff.

66. But for the negligence and professional negligence of Defendants the funds would now be in existence and could be produced by Defendants to the settling underlying plaintiff.

67. However, because of the negligence and professional negligence of Defendants, the funds cannot be produced and are lost.

68. Defendants' negligent and conflicted advice proximately led to negative financial and legal consequences for Plaintiff, but for which would not have suffered financial and legal losses and negative consequences.

69. As a proximate result of the negligent practice Plaintiff has suffered the loss of \$ 1 Million.

70. As a result, Plaintiff have been damaged in the amount of \$1 Million along with attorney fees, interest and the costs and disbursements of the litigation.

SECOND CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

71. Plaintiff re-alleges the allegations contained in preceding paragraphs with the same force and effect as if separately set forth and numbered herein.

72. By virtue of the contractual duty and the quasi-attorney-client relationship, Defendants owed Plaintiff a fiduciary duty to deal fairly, honestly and with undivided loyalty, including maintaining confidentiality, maintain the separate status of trust funds, the segregation of trust funds from operating funds, avoiding conflicts of interest, operating competently, safeguarding client property and honoring the client's interests over their own.

73. Defendants were under a duty to Plaintiff to act for it, to act correctly for it, to properly hold onto trust funds, to hold escrow funds, to segregate escrow or trust funds from the law firm's operating funds and to avoid conflicts of interest in its representation of Plaintiff by following the Rules of Professional Conduct, maintaining trust funds for the benefit of the underlying plaintiff and not to engage in a conflict of interest.

74. Defendants were under a fiduciary duty to avoid engaging in conduct which caused financial harm to Plaintiff and to avoid engaging in conduct, which was unnecessary, counter-productive, counter-indicated or simply wrongful.

75. While acting as attorney for, escrow holder and performing work pursuant to the contract for Plaintiff, Defendants failed to maintain trust funds separate from operating funds, to account for the

trust funds, failed to produce trust funds held on behalf of Plaintiff or the underlying personal injury plaintiff.

76. Defendants failed to hold the trust funds, failed to segregate the trust funds, comingled the trust funds, lost the opportunity of redemption, lost the trust fund proceeds.

77. It was a breach of fiduciary duty to engage in any of these acts or to fail to handle the trust funds in a proper manner. This breach of fiduciary duty caused Plaintiff to be responsible for the second payment of \$ 1 Million to the underlying plaintiff, and necessitated Plaintiff to engage attorneys to deal with the issue, all to the detriment of Plaintiff.

78. Defendants breached this fiduciary duty to Plaintiff by the way the funds were handled and then lost the trust funds, comingled the trust funds and then becoming unable to produce the trust funds on all matters within the scope of the quasi-attorney representation of Plaintiff.

79. That breach of fiduciary duty was a substantial factor in damages to Plaintiff and the conflict of interest between its own interests along with the delay, excessive litigation, unnecessary litigation, and loss of the trust funds.

80. But for the acts of, and fiduciary advice of Defendants, Plaintiff would not have lost the \$ 1 Million nor become responsible to pay a second \$ 1 Million to the underlying personal injury plaintiff nor been the subject of unnecessary or contra-indicated litigation necessary to protect their interests.

81. All Defendants were in violation of its fiduciary duties, was in breach of fiduciary duty, and was in violation of the ethical obligations of an attorney to its client.

82. These violations and breaches were a substantial factor in the negative financial outcome for Plaintiff, and proximately caused severe potential future financial damage to Plaintiff.

83. As a proximate result of these shortcomings in representation Plaintiff has been damaged by this breach of fiduciary duty and the attendant conflict of interest between Defendant and Plaintiff in an amount to be determined by the Court.

84. By reason of the foregoing violations and breaches, Plaintiff is entitled to judgment against Defendants for a sum to be determined based on the fiduciary duty claim.

THIRD CAUSE OF ACTION

CONVERSION

85. Plaintiff repeats and reiterates the preceding paragraphs as if fully set forth herein.

86. Defendants intentionally took possession of the Check # 0000239219 in the amount of \$1 Million to the order of "D'Amato & Lynch LLP Trust Account."

87. Defendants exercised control over the Check and the funds which were represented by the check.

88. Defendants took possession of a negotiable instrument, to wit: Check # 0000239219 in the amount of \$1 Million to the order of "D'Amato & Lynch LLP Trust Account" and refused to return the Check upon demand.

89. The person or persons to whom it was delivered refused to return the check upon demand.

90. Defendants refused to return or pay the Check when a demand was made for the return of the Check or a return payment.

91. Defendants jointly and severally exercised control and dominion over the Check and interfered with the check and the funds which it represented to the exclusion of Plaintiff, which was the owner, and which had transmitted the Check as a trust account item.

92. Defendants interfered and maintained possession of the Check and the funds which it represented to the exclusion and contrary to the rights of Plaintiff which had the right to possession and of a return of the check or the funds it represented upon demand.

93. As a result, Plaintiff has been deprived of possession of the Check or the funds it represented, in the amount of \$ 1 Million and is thereby damaged.

FOURTH CAUSE OF ACTION

VIOLATION OF THE RULES OF PROFESSIONAL RESPONSIBILITY BY COMINGLING OF FUNDS

94. Plaintiff repeats and reiterates the preceding paragraphs as if fully set forth herein.

95. The \$ 1 Million was paid to the D & L Trust Account and was “client funds” within the meaning of Rule 1.15 of the Rules of Professional Conduct.

96. It is a violation of Rule 1.15 of the Rules of Professional Conduct to commingle or misappropriate client funds.

97. Defendants commingled the funds by allowing the funds to be deposited into the Law firms operating account.

98. Responsible financial representatives of D & L admit the commingling.

99. Upon Demand D & L refused to return the \$ 1 Million, or to move it to the Trust Account for Defendants.

100. Defendants thereby misappropriated the funds in violation of Rule 1.15.

101. This violation of the Rules of Professional Conduct proximately led to the loss of \$ 1 Million dollars, which Defendants either refuse to or cannot produce.

102. But for the violation of the Rules of Professional Conduct there would have been no loss of the trust funds.

103. This proximately caused loss is a result of the violation of Professional Rules.

104. As a result, Plaintiff has been deprived of \$ 1 Million and is thereby damaged.

FIFTH CAUSE OF ACTION

VIOLATION OF JUDICIARY LAW § 487 IN KEEPING, HOLDING OR TAKING FOR OR ON ACCOUNT ANY MONEY WHICH HAS NOT BEEN LAID OUT BY THE ATTORNEY

105. Plaintiff repeats and reiterates the preceding paragraphs as if fully set forth herein.

106. It is a violation of Judiciary Law § 487 for an attorney to willfully receive any money or allowance for or on account of any money which he has not laid out, or has become answerable to and then not return the money of his own accord or upon demand.

107. Defendants willfully received money or allowance for or on account of any money which they had not laid out, or has become answerable to.

108. Defendants then refused or could not return the money of their own accord or upon demand.

109. As a result, they are subject to Judiciary Law § 487 and are subject to treble damages for their acts concerning the sum of \$ 1 Million.

SIXTH CAUSE OF ACTION**THE DEFENDANTS FRAUDULENTLY CONVEYED
THE \$1 MILLION CHECK OR ITS PROCEEDS WHICH THEY
RECEIVED IN TRUST IN VIOLATION OF NEW YORK'S DEBTOR
AND CREDITOR LAW, SECTION 270 THROUGH SECTION 279.**

110. Plaintiff repeats and reiterates the preceding paragraphs as if fully set forth herein.

111. Once the \$1 million was placed in the D & L operating account the cause of action accrued, and the firm became a debtor under the law, while FMIC became the creditor.

112. Plaintiff's cause of action arose prior to the subject transfer of the check or its proceeds.

113. Accordingly, Plaintiff is a creditor which could pursue relief under Debtor and Creditor Law § 273.

114. Defendants' violation of Debtor and Creditor Law renders the later transfers void.

115. Accordingly, Plaintiff is entitled to the return of transferred funds from all persons and entities to whom the funds were transferred.

116. As a result, Plaintiff has been damaged in the sum of \$ 1 Million plus costs and disbursements and attorney fees, along with punitive damages for the taking, retention and transfer of the trust monies.

SEVENTH CAUSE OF ACTION**UNJUST ENRICHMENT**

117. Plaintiff repeats and reiterates the preceding paragraphs as if fully set forth herein.

118. Defendants have obtained possession of \$ 1 Million that rightfully belongs to either Plaintiff or to the underlying plaintiff in the personal injury action and taken the money at the expense of Plaintiff.

119. Defendants were enriched by taking and retaining the \$ 1 Million trust funds.
120. This taking or retention was at plaintiff's expense as plaintiff must now pay another \$1 Million to the underlying plaintiff in the personal injury action.
121. Equity and good conscience mitigate against permitting Defendants to retain the \$ 1 Million trust funds.
122. Because under no circumstances can the trust funds provided as settlement to the underlying personal injury plaintiff be taken by Defendants, they have been unjustly enriched by their taking and retention of the \$1 Million.
123. They should be directed to return the \$ 1 Million.
124. Under these circumstances, in equity and good conscience, they must return the \$ 1 Million.

WHEREFORE, Plaintiff demands judgment against Defendants for an amount to be determined at trial, disgorgement of previously paid legal fees, treble damages, punitive damages and attorney fees together with the costs and disbursements of this action, and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
September 19, 2019




Andrew Lavooott Bluestone
233 Broadway, Suite 2702
New York, NY 10279
(212) 791-5600

HILLSBOROUGH COUNTY)
)
STATE OF NEW HAMPSHIRE)

ss:

Michael Bryant being duly sworn, deposes and says that deponent is a Vice President of Plaintiff, RiverStone Claims Management, LLC, the corporation described as Plaintiff in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the factual allegations contained in the Complaint are true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes them to be true. This verification is made by deponent because Plaintiff is a Limited Liability Company and Deponent is the Vice President thereof.


Michael Bryant

Sworn to before me this
day of September, 2019


Notary Public

